

FILED/ACCEPTED

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of

Universal Service High-Cost Filing Deadlines

PETITION FOR WAIVER OF SECTION  
54.904(d) DEADLINE  
FOR ANNUAL INTERSTATE COMMON  
LINE SUPPORT CERTIFICATION

WC Docket No. 08-71

~~cc Docket No. 06-45~~

Minerva Valley Telephone Company, Inc. ("Minerva Valley"; Study Area Code 351246), by its consultant and pursuant to Section 1.3 of the Commission's Rules, requests waiver of the June 30, 2008 deadline established by Section 54.904(d) of the Rules for the filing of its annual certification with the Universal Service Administrative Company ("USAC") that its Interstate Common Line Support ("ICLS") for the period from July 1, 2008 through June 30, 2009 will be used only for the intended purposes.

Minerva Valley simultaneously transmitted its annual ICLS certifications by First Class United States mail, postage prepaid, in what its new General Manager believed to be a prudent and timely fashion on Thursday, June 26th 2008, to both of the required filing destinations: (1) the Commission's Office of the Secretary; and (2) USAC's Washington, DC office. Minerva Valley had hired a new General Manager just prior to the filing date of June 30, 2008. The new General Manager believed four (4) days to be a more than adequate period to allow delivery of First Class mail from its Zeoring, Iowa post office to destinations in Washington, DC. However, it appears that the copy mailed to the Office of the Secretary was not received by the Commission until Wednesday, July 2, 2008, and that the copy mailed to USAC was also not received until Wednesday, July 2, 2008. In Minerva Valley's case, it is estimated that it would otherwise be entitled to approximately \$9,228 of ICLS per month (or a total of \$55,368) for the period from July 1, 2008 to December 30, 2008.

The requested waiver is needed because what appears to be an unforeseen delay in the delivery of First Class mail by the United States Postal Service eliminated the receipt by Minerva Valley of approximately \$55,368 of critically needed ICLS to which it would otherwise be entitled during the period from July 1, 2008 to December 31, 2008. It is the understanding of Minerva Valley the penalty for the late filing is six (6) months of suspended payments.

Good cause exists for the requested waiver because: (1) Minerva Valley made material and substantial attempts to comply with all of its ICLS filing requirements for 2008-2009, including its ICLS projection and line count data filings as well as its ICLS certifications; (2) Minerva Valley made a timely and good faith effort to prepare and submit its annual ICLS certification by the June 30, 2008 deadline, but appears to have been prevented by unanticipated United States Postal Service delay from completing the filing of its certifications with the Commission and

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USAC by the deadline; (3) grant of the requested waiver will have no significant adverse impact upon USAC's administration of the ICLS program; (4) the loss or substantially delayed receipt of approximately \$55,368 of ICLS will impair the ability of Minerva Valley to invest in new and upgraded telecommunications infrastructure, and may ultimately result in service quality decreases or local service rate increases for its rural Iowa customers; and (5) the loss of approximately \$55,368 of ICLS would constitute an excessive penalty for Minerva Valley and its customers for what was an unintentional delay in mail delivery.

### **Background**

Minerva Valley Telephone Co., Inc. began doing business as Tri County Telephone when The St. Anthony Cooperative Telephone Association and The Zearing Telephone Association merged together in 1956. In April, 1957, The Clemmons Mutual Telephone Company joined the merger and the name was changed to Minerva Valley Telephone Co., Inc. The name was inspired by the Minerva Creek which winds its way through or near the three communities.

Minerva Valley Telephone has added many aspects to their business in the past few years. Internet service and Cable Television are now major parts of the business. Minerva Valley Wireless will begin providing wireless telephone service to our customers in the fall of 2006.

Minerva Valley is proud to have served our customers for the past 50 plus years and is looking forward to providing quality, dependable service far into the future.

The Board of Directors for Minerva Valley is made up of nine shareholders, five of which must reside in the 487 (Zearing) exchange and four which must reside in the 477 (Clemmons/St. Anthony) exchange. Each director is elected for a three year term.

Minerva Valley is a rural incumbent local exchange carrier ("ILEC") headquartered in the city of Zearing in central Iowa. It serves a total of approximately 723 access lines in two sparsely populated exchanges serving the areas in and around the following rural Iowa communities: (1) the city of Zearing (2000 population: 617) in central Iowa; and (2) the city of Clemmons (2000 population: 148) in central Iowa. These two exchanges constitute the entire local exchange service area of Minerva Valley, as well as its entire Iowa study area (Study Area No. 351246). Minerva Valley is a rural telephone company, an ILEC, and a Rate of Return carrier that operates on an average schedule basis. It has been an eligible telecommunications carrier ("ETC") since the Telecommunications Act of 1996 was first implemented. In review of its filing history, it is worth noting we were unable to identify where Minerva Valley has ever filed a late or deficient report since the reporting requirements related to Universal Service Fund were initiated.

### **Good Cause Exists for Waiver of the Section 54.904(d) Deadline**

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

### **A. Material and Substantial Compliance Efforts**

The special circumstances supporting grant of the requested waiver begin with the material, substantial and timely efforts made by Minerva Valley to comply with all of the requirements and filings necessary to qualify for and receive ICLS for the 2008-2009 period.

Minerva Valley, either directly or through the National Exchange Carrier Association ("NECA") as its representative, has complied fully and in a timely manner with the ICLS data filing requirements of Section 54.903(a) of the Commission's Rules (including the submission of projected common line cost and revenue data, actual common line cost and revenue data, and line counts) since these requirements became effective in late 2001. Minerva Valley has not missed any of these Section 54.903(a) filing deadlines, and is currently up-to-date with respect to all of its ICLS data submission obligations for the 2008-2009 period.

To assure future compliance and timely filings, the Minerva Valley Board of Directors has established a development session with the new General Manager. Two board members along with the general manager will be meeting with consultants on March 17<sup>th</sup> to discuss managerial attributes that could be improved including organizational skills necessary within job responsibilities to adhere to regulatory requirements. Meetings will also be set with auditors to go over filing requirements and how they correlate with revenue streams.

Minerva Valley also made a material, substantial, timely and good faith effort to comply with the subject June 30, 2008 ICLS certification deadline. The certification was signed on Thursday, June 26, 2008, and copies were taken to the Zearing, Iowa post office that day and placed in First Class United States mail, postage prepaid, for delivery both to the Commission and to USAC's Washington, DC office. The new General Manager, believed a four-day mailing period to be more than sufficient to ensure delivery of First Class mail from Zearing to Washington, DC, and never suspected that there might be a problem getting the subject Minerva Valley ICLS certification to the Commission and USAC by June 30, 2008.

In sum, since ICLS was added to the Universal Service Fund ("USF") programs, Minerva Valley has made substantial, material, timely and good faith efforts to comply with the ICLS filing requirements and procedures of the Commission and USAC.

### **B. Unforeseen Mail Delay or Mix-Up**

The Commission has frequently waived deadlines that were missed due to unforeseen and uncontrollable conditions. It has found that policy and equitable considerations, as well as the avoidance of undue hardship, warrant the grant of waivers to allow the acceptance and consideration of late filings in such circumstances. See, for example, *Farmers Mutual Telephone Company*, DA 08-925 (Wireline Compo Bur. April 21, 2008) (annual Section 54.314(d) state certification filing deadline waived to allow Local Switching Support ("LSS") recipient to receive support when confusion between it and the Idaho Public Utility Commission regarding new state ETC requirements resulted in a late-filed certification); *Alliance Communications Cooperative, Inc. and Hills Telephone Company, Inc.*, DA 05-3024 (Wireline Compo Bur.

November 22, 2005) (Section 54.30 I(b) LSS deadline waived to accept projected LSS data submission filed four months late due to disruptions caused by corporate reorganizations and employee reassignments); *Smithville Telephone Company*, 19 FCC Rcd 8891 (Wireline Comp. Bur. May 18, 2004) (Section 54.301(b) LSS deadline waived to accept a projected LSS data submission filed four months late due to disruptions caused by the death of the carrier's president and the illness of its regulatory accountant); *Metricom, Inc. Request for Waiver of Section 27.208(A) of the Commission's Rules*, 13 FCC Rcd 890 (Wireless Tel. Bur. 1998) (waiver of payment deadline when bank error in transmitting payment caused delay); *Application of Fred Farley for Authority to Construct and Operate a Domestic Public Cellular radio Telecommunications Service*, 4 FCC Rcd 4670 (Comm. Carr. Bur. 1989) (waiver of deadline because clerical error caused improper filing on due date).

Here, Minerva Valley delivered its ICLS certifications to the Zeigler post office for mailing to both the Commission and USAC on Thursday, June 26, 2008, four days in advance of the Monday, June 30 deadline. This had previously been more than sufficient time for the United States Postal Service to deliver first class mail from Zeigler to Washington, DC.

Equity requires that Minerva Valley's substantial compliance efforts be recognized and that the Section 54.904(d) deadline be waived in order to avoid the imposition of undue hardship for a wholly uncontrollable and unexpected delay in the delivery of Minerva Valley's certification to USAC.

#### **C. No Adverse Impact on USF Administration**

USAC has received Minerva Valley's relevant projected common line cost and revenue data and line counts in timely fashion for it to incorporate Minerva Valley's estimated ICLS funding into its USF contribution and disbursement plans and programs for 2008 and 2009. The relatively brief delay from June 30 to July 2 in USAC's receipt of Minerva Valley's ICLS certification will not disrupt or delay USAC's administration of the ICLS program or other federal USF programs. Hence, grant of Minerva Valley's requested waiver will not adversely impact administration of the USF programs.

#### **D. Adverse Impacts upon Investment, Local Rates and Jobs**

In contrast, the loss of all or a significant portion of the approximately \$55,368 of ICLS to which Minerva Valley would otherwise be entitled for the second half of 2008 period would be a severe blow to Minerva Valley and its rural Iowa communities. That amount represents approximately 4.5 percent of Minerva Valley's annual revenues. Revenue losses of this magnitude are extremely onerous and disruptive for small companies like Minerva Valley, particularly when they are not accompanied by any offsetting loop or other cost reductions. Minerva Valley will have no choice but to reduce its cash outlays, or increase its revenues from other sources, in order to offset such a substantial ICLS loss.

One option would be to increase the local service rates paid by Minerva Valley's rural customers. The projected \$55,368 of ICLS represents an average of \$76.58 for each of Minerva Valley's approximately 723 access lines. Rate increases to recover such amounts constitute an

unwarranted penalty to Minerva Valley's customers for an unforeseen and uncontrollable mail delay, and do not advance the fundamental Universal Service principle of just, reasonable and affordable rates.

In the alternative, the loss of approximately \$55,368 of ICLS revenues will impair the ability of Minerva Valley to invest in infrastructure additions and upgrades, thereby reducing the future services and service quality available to its rural member-customers. In addition to eliminating \$55,368 in potential cash reserves available for equipment purchases and down payments, the potential ICLS revenue loss will make it more difficult for Minerva Valley to obtain infrastructure investment loans at reasonable interest rates by reducing the assets and financial ratios used by bankers to evaluate and price such loans.

Yet another alternative for offsetting a loss of \$55,368 of ICLS is to reduce operating expenses. Whereas rural telephone companies take very seriously their responsibilities as significant employers in rural communities, it may not be possible for a small company like Minerva Valley to weather a \$55,368 revenue loss without cutting jobs or salaries. In the very small rural communities in Minerva Valley's service area, the loss or temporary lay-off of even a couple of telephone cooperative jobs can cause significant disruptions and hardships.

#### **E. Excessive and Onerous Penalty**

Penalties and forfeitures are not favored by the law, and should be enforced only when they are within both the spirit and letter of the law. *United States v. One Ford Coach*, 307 U.S. 219, 226 (1939). In determining whether penalties and fines are excessive, courts have examined whether they are "so disproportionate to the offense as to shock public sentiment" or "contrary to the judgment of reasonable people concerning what is proper under the circumstances." *Hindt v. State*, 421 A.2d 1325, 1333 (Del. 1980).

The imposition of an effective penalty of approximately \$55,368 upon Minerva Valley for an unanticipated and uncontrollable mailing delay would be wholly disproportionate to the alleged "offense" and would be deemed "excessive" in the judgment of virtually all reasonable people.

#### **REQUEST FOR WAIVER**

Minerva Valley understands very well the extreme importance of timely data and certification filings by all ETCs, and regrets its' USAC Fourth Quarter 2008 delinquent receipt of its certification filing. As explained proceeding, Minerva Valley did not allow for the exceptions, which affected the delivery of its filing using normal US Mail. Minerva Valley now understands it should send future reports allowing for any exceptions affecting delivery of its filing and will send future filings with additional time allowed and will send in a manner which provides for verification of timely receipt.

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant of a waiver would be in the public interest,

or in view of unique or unusual factual circumstances of the instant case, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

(ii) Minerva Valley takes no issue with the reasonableness of the Commission's rules requiring timely data submissions by ILECs, and recognizes the importance of compliance with these rules. Minerva Valley contends the purpose of these rules, however, is to ensure the Commission and USAC are able to properly project, collect, and distribute all universal service mechanisms in a timely and accurate manner. Given USAC requested the information from Minerva Valley and recommended Minerva Valley file this petition for waiver, and Minerva Valley has already submitted the ICLS certification to USAC, the lateness should not have unduly hindered USAC's administrative functions. Because Minerva Valley took action upon identification of its delinquent filing, Minerva Valley contends an interruption of its ICLS support for an entire six months would frustrate the purpose of the Interstate Common Line Support rules, and would not serve the public interest. Minerva Valley has been approved for ETC status by the Iowa Utilities Board (IUB) and proper use of the support provided has been certified by Minerva Valley with the Commission, USAC, and the IUB. While denial of projected Interstate Common Line Support during the third and fourth quarters of 2008 due to a filing error, an error acted on upon discovery, it would not be in the public interest for the reason stated above, Minerva Valley feels it has shown good cause for waiver of this filing deadline under Section 1.3 of the Commission's rules, as well as justification for such a waiver at the Commission's discretion under Section 1.925(b)(3). The waiver would serve the public interest by allowing Minerva Valley to receive ICLS support for its ETC offering. Expedited action is requested so USAC may accept Minerva Valley's Fourth Quarter 2008 ICLS certification data as timely, allowing the data included in this filing to be incorporated into USAC's 2008 projections and support payments, and allowing Minerva Valley to receive ICLS support.

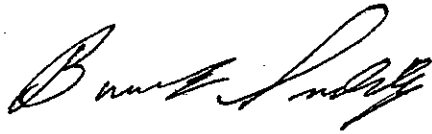
## **Conclusion**

Good cause, as well as considerations of hardship, equity, and the effective implementation of the Commission's universal service policies, warrant grant of Minerva Valley's requested waiver of the Section 54.904(d) annual ICLS certification deadline. Minerva Valley has complied with the critical Section 54.903(a) ICLS revenue, cost and line count requirements and deadlines, and has exerted substantial efforts to comply fully and in good faith with the Section 54.904(d) certification deadline only to be frustrated by an unexpected mail delivery delay. Whereas grant of the requested waiver will not disrupt or impair USAC's administration of ICLS and other universal service programs, the potential loss or delayed receipt by Minerva Valley of the approximately \$55,368 of ICLS to which it is otherwise entitled during the second half of 2008 would impose severe and unwarranted hardships upon its customers, employees and investment plans and constitute an excessive and onerous penalty for an unanticipated and uncontrollable delay in mail delivery.

Good cause having been shown, the Commission is requested to waive the Section 54.904(d) ICLS certification deadline, and to order USAC to distribute to Minerva Valley the

approximately \$55,368 of ICLS to which Minerva Valley is otherwise entitled during the second half of 2008. Because the ICLS at stake is so substantial and critical for Minerva Valley, the Commission is requested to act expeditiously upon this petition.

Respectfully submitted,



Dated: March 4, 2009

**Minerva Valley Telephone Company, Inc.**

BY

Its Consultant

Kiesling Associates

7780 Office Plaza Drive South

Suite 184

West Des Moines, IA 50266-2337

Phone: (515) 223-0159

Facsimile: (515) 223-5429

Email: [bsnoddy@kiesling.com](mailto:bsnoddy@kiesling.com)

Dated: March 3, 2009

Minerva Valley Telephone Company, Inc., CC Docket No. 96-45, March 3, 2009

**DECLARATION**

I, Dennis Baker, hereby declare, under penalty of perjury, as follows:

- I. I am a member of the Board of Directors of Minerva Valley Telephone Company, Inc. ("Minerva Valley").
- II. I have reviewed Minerva Valley's "Petition for Waiver of Section 54.904(d) Deadline for Interstate Common Line Support Certification," dated March 5, 2009, and declare that the factual statements and representations therein are true and correct to the best of my knowledge, information and belief.

Signature

A handwritten signature in black ink, appearing to read "Dennis Baker", with a long horizontal line extending to the right.

Dennis Baker

Minerva Valley Telephone Company, Inc. Board of Director